

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D. C. 20554

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JUN 20 2002

In the Matter of)
)
 Waiver of the Rules of the Federal)
 Communications Commission Relating)
 to the Transmission of Digital Wireless)
 911 Calls from TTY Devices)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

CC Docket No. 94-102

Rural Cellular Corporation and Subsidiaries

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND EXTENSION OF
 DIGITAL WIRELESS 911 TTY REQUIREMENTS**

1. Rural Cellular Corporation and its subsidiaries^{1/} (collectively, the "RCC Licensees" or "Petitioner"), by its attorneys, respectfully requests a waiver and extension of Section 20.18(c) of the Commission's rules, 47 U.S.C. §20.18(c), and the accompanying note to that section of the rules. Specifically, Petitioner seeks a waiver and extension of the compliance date according to specific circumstances that relate to RCC Licensees' various switches, as will be explained herein. The extensions requested by this petition range from three months' to nine months' additional time beyond the current June 30, 2002 deadline by which digital wireless operators must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other

^{1/} The following companies are wholly-owned subsidiaries of Rural Cellular Corporation ("RCC") and are authorized by the FCC to provide broadband Commercial Mobile Radio Service ("CMRS"): MRCC, Inc., New Hampshire Wireless, LLC, RCC Atlantic, Inc., RCC Holdings, Inc., RCC Minnesota, Inc., Saco River Communications Corporation, SRCL Holding Company, Inc. and TLA Spectrum, L.L.C. An additional CMRS licensee, Wireless

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than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY).

2. The RCC Licensees provide wireless service in four widely separated regions of the country through the use of switches manufactured by three different companies: Nortel, Ericsson and Lucent. None of the switches used by the RCC Licensees is presently capable of digital 911 TTY calling, although efforts have been made and are continuing to allow for such calling, including appropriate switch software upgrades. Full compliance is anticipated at all locations by March 31, 2003 or sooner. As this petition will show, good cause exists for a temporary waiver and extension of time for digital 911 TTY implementation.^{2/} In the context of the Commission's E911 Phase II rules, the Commission has specifically provided that a waiver would be granted in such "instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible..."^{3/} The same waiver policy should be applicable to the June 30, 2002 deadline by which digital wireless providers must be capable of transmitting 911 calls using TTY devices.

Alliance, L.L.C., is majority-owned by RCC but is not a party to this petition.

^{2/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

^{3/} Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18,710, 18,718 (1996).

Background and Facts

3. The FCC has adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the congressional directive that wireless communications operators deploy a nationwide, seamless communications infrastructure for emergency services.^{4/} On December 1, 1997, the Commission adopted a *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402, released December 13, 1997 (“MO&O”) which, at para. 59, suspended until October 1, 1998 enforcement of the requirement that licensees providing service on *digital* wireless systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Suspension of enforcement of the subject Section 20.18(c) of the Commission’s Rules was further extended until November 15, 1998,^{5/} and again until January 1, 1999.^{6/} Finally the Commission established the current deployment deadline of June 30, 2002.^{7/}

4. The RCC Licensees operate cellular and/or broadband Personal Communications Services facilities in 12 states throughout the United States. All markets where the RCC Licensees provide service are either small metropolitan areas or rural areas of the country. Service is provided in four regional clusters, through switches installed at strategic locations. A case-by-case review of the capabilities and plans for necessary switch software upgrades or

^{4/} Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

^{5/} Order in CC Docket No. 94-102, DA 98-1982 (Wireless Telecommunications Bureau), released September 30, 1998.

^{6/} Order in CC Docket No. 94-102, DA 98-2323 (Wireless Telecommunications Bureau), released November 13, 1998.

^{7/} *Fourth Report and Order*, CC Docket No. 94-102, FCC 00-436, rel. December 14, 2000.

patches follows:

Nortel DMS-MTX Switches: The RCC Licensees utilize Nortel switches at Bangor, Maine and Alexandria, Minnesota. The manufacturer informed Petitioner that software upgrades to "MTX-10" will provide digital 911 - TTY compatibility. The upgrades are scheduled to be loaded on July 26, 2002 at both locations and it is anticipated that compliance with Section 20.18(c) will be possible by July 30, 2002. Allowing time for any unanticipated complications resulting from the software upgrade, a three-month extension of time, until September 30, 2002, is requested as to Petitioner's wireless systems in Northeast and North Central United States areas served by the Nortel switches.

Ericsson CMS-8800 Switch: The RCC Licensees utilize an Ericsson switch at Walla Walla, Washington. The manufacturer informed Petitioner that a software upgrade to "Version 7" will provide digital 911 - TTY compatibility. The upgrade is scheduled for September 30, 2002 and it is anticipated that compliance with Section 20.18(c) will be possible by October 15, 2002. Allowing time for any unanticipated complications resulting from the software upgrade, a six-month extension of time, until December 31, 2002, is requested as to Petitioner's wireless operations in Pacific Northwest areas served by the Ericsson switch.

Lucent Autoplex Switches: The RCC Licensees utilize Lucent switches at Colchester, Vermont; Hays, Kansas; and Enterprise, Alabama. At a critical time in Petitioner's planning processes the manufacturer was unclear in its communications with Petitioner about what software load would be required for digital 911 - TTY compatibility by the Lucent switches. A message from the manufacturer received after current budgets of

Petitioner were put into effect stated that the switches would support digital 911 - TTY capability if at "Load 17.1." That software load will cost Petitioner a large sum, but the amount is now budgeted for the first quarter of 2003.^{8/} Allowing time for any unanticipated complications resulting from the software upgrade, a nine-month extension of time, until March 31, 2003, is requested as to Petitioner's wireless operations in Northeast and South Central U.S. areas served by the Lucent switches.

5. Petitioner will implement TTY/E911 capability for the benefit of persons with speech and hearing disabilities as soon as it is technically and economically feasible, preferably in advance of the extended dates for compliance requested by this petition.

Justification for Waiver

6. Petitioner has made efforts to meet the June 30, 2002 deadline, and has reported such efforts to the TTY Forum. Compliance is not presently achievable due to software upgrades not yet installed and the lack of acceptable TTY-capable handsets. Petitioner is attempting to comply with Section 20.18(c), and must do so in an economically feasible and technically reliable manner.

7. The nature of the necessary upgrades and the coordination required between Petitioner and its switch vendors render timely compliance unachievable; nevertheless, Petitioner has a firm plan for achieving full compliance. Petitioner has scheduled software upgrades to all Nortel and Ericsson switches, and has budgeted funds to upgrade software for Lucent switches.

8. As demonstrated herein, Petitioner's compliance with the digital 911 TTY requirements

^{8/} Petitioner is investigating the possibility that a software "patch" to the current software will allow digital 911 - TTY capability prior to a Load 17 upgrade. If a patch is successful and capability for digital 911 - TTY calls is achieved, Petitioner will notify the Commission accordingly.

by June 30, 2002 is not reasonably achievable. Petitioner continues to work closely with its equipment and software suppliers to institute TTY solutions in its wireless systems. Petitioner has arranged to install compliant software as soon as it is practicable to do so. In the meantime the public is being served by alternative solutions, including analog wireless TTY and landline TTY. Achieving digital wireless TTY functionality has been a priority for Petitioner's technical staff, but the service is not yet feasible.

Request for Waiver

9. The RCC Licensees operate in predominantly rural markets where there is no known immediate demand for digital TTY capability. Brief extensions of time to accommodate switch software upgrade plans, ranging from 3 to 9 months' time beyond June 30, 2002, will allow Petitioner to implement digital 911 TTY according to a schedule that will permit an orderly transition in Petitioner's network infrastructure.

10. The unique and unusual circumstances surrounding the transmission of 911 calls using TTY devices on Petitioner's digital wireless systems warrants special consideration by the Commission. Petitioner's inability to comply with the implementation deadline is due to circumstances beyond Petitioner's immediate control and which render compliance by June 30, 2002 not reasonably achievable due to technical and economic reasons.

11. Enforcement of Section 20.18(c) requirements against Petitioner would impose burdens on Petitioner that are not justified by any public interest benefit. Petitioner consistently attempts to offer the best service possible to subscribers and roamers in the rural and small metropolitan markets it serves. The Commission has stated numerous times that it seeks to be a

proponent of the spread of telecommunications services to rural areas.^{9/} In this case, Petitioner requests the opportunity to continue the high quality of service that it presently offers to its customers, and to be relieved of the immediate obligation to offer digital TTY/E911 transmissions by means of a waiver of Section 20.18(c) the FCC's rules.

Conclusion


12. For the reasons explained, Petitioner requests a waiver of the Commission's requirements for transmission of 911 calls made from TTY devices using digital wireless systems, and, in particular, brief extensions ranging from 3 to 9 months beyond the current June 30, 2002 deadline for compliance with Rule Section 20.18(c). Petitioner's showing herein is consistent with the requirements for waiver set forth by the Commission. Its request is specific, focused and limited in scope, and with a clear path to full compliance. Furthermore, the public interest benefit

^{9/} Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

of such grant exceeds the benefit of enforcement of the deadline in this instance. Accordingly, Petitioner requests that a waiver be granted as proposed.

Respectfully submitted,

**RURAL CELLULAR CORPORATION
and SUBSIDIARIES**

By: 
David L. Nace
Pamela L. Gist
Its Attorneys

Date: June 20, 2002

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DECLARATION

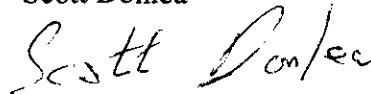
I, Scott Donlea, hereby state and declare:

1. I am Vice President- Market Development of Rural Cellular Corporation.
2. I am familiar with the facts contained in the foregoing "Petition For Waiver And Extension of Digital Wireless 911 TTY Requirements" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of June, 2002.

Scott Donlea

A handwritten signature in cursive script that reads "Scott Donlea".

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 20th day of June, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND EXTENSION OF DIGITAL WIRELESS 911 TTY REQUIREMENTS to the following:

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